

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RUDOLPH GERMAN SERRANO,

Plaintiff,

v.

No. 15cv1063 KG/KK

GOVERNOR SUSANA MARTINEZ, *et al.*,

Defendants.

MEMORANDUM OPINION AND ORDER
DENYING MOTION FOR LEAVE TO APPEAL *IN FORMA PAUPERIS*

THIS MATTER comes before the Court on *pro se* Plaintiff's Motion for Leave to Proceed on Appeal Without Prepayment of Costs or Fees, Doc. 14, filed April 26, 2016. The Court certifies that Plaintiff's appeal is not taken in good faith and **DENIES** the motion.

On December 3, 2015, the Court dismissed all Defendants other than Officer B. McKinney and advised Plaintiff that it would not order service of Summons and Complaint on Defendant McKinney because Plaintiff had not included Defendant McKinney's address, which is necessary for service. *See* Doc. 5. The Court further advised that it would order service if Plaintiff filed a motion for service that included Defendant McKinney's address. The Court later ordered Plaintiff to show cause why service had not been accomplished on Defendant McKinney within the 120-day period after the filing of the Complaint and notified Plaintiff that failure to comply with the Order to Show Cause may result in dismissal of the remaining claims against Defendant McKinney. *See* Doc. 6 at 2. Plaintiff's Response to the Order to Show Cause failed to address why service of process had not been accomplished on Defendant McKinney. After explaining that the "Court may dismiss an action under Fed. R. Civ. P. 41(b) for failure to prosecute, to comply with the rules of civil procedure, or to comply with court orders," the Court dismissed all

claims in Plaintiff's Civil Rights Complaint Pursuant to 42 U.S.C. § 1983, Doc. 1, without prejudice for failure to comply with the Court's Orders and with Fed. R. Civ. P. 4(m). *See* Doc. 11, filed April 22, 2016 (citing *Olsen v Mapes*, 333 F.3d 1199, 1204, n. 3 (10th Cir. 2003) (noting that district court may dismiss *sua sponte* when one of Rule 41(b) conditions is met)). On April 26, 2016, Plaintiff filed a Notice of Appeal, Doc. 13, and a Motion for Leave to Proceed on Appeal without Prepayment of Costs or Fees, Doc. 14.

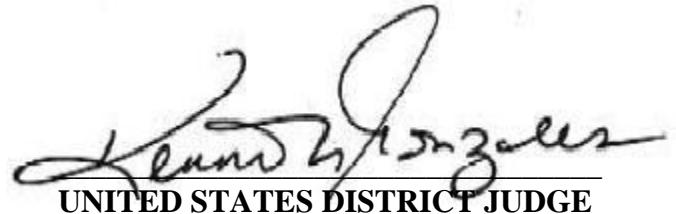
"In order to succeed on [a motion for leave to proceed on appeal without prepayment of costs or fees], an appellant must show a financial inability to pay the required filing fees and the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal." *DeBardeleben v. Quinlan*, 937 F.2d 502, 505 (10th Cir. 1991). "An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). "The Supreme Court has held that good faith is to be judged by an objective standard, for review of any issue 'not frivolous.'" *Spearman v. Collins*, 500 Fed.Appx. 742, 743 (10th Cir. 2012) (citing *Coppedge v. United States*, 369 U.S. 438, 445 (1962)). "An appeal is frivolous when the result is obvious, or the appellant's arguments of error are wholly without merit." *Id.*; *see also Thompson v. Gibson*, 289 F.3d 1218, 1222 (10th Cir. 2002) ("an appeal is frivolous if it lacks an arguable basis in either law or fact").

Plaintiff has not set forth any argument of error regarding the Court's dismissal of this case. Plaintiff used the form "Motion for Leave to Proceed on Appeal Without Prepayment of Costs or Fees (non-PLRA)" which prompts Plaintiff to identify his issues on appeal. *See* Doc. 14 at 2. Plaintiff stated his issues on appeal are: "When an Issue between conflict between the Rules and the Constitutional Values, the crimes committed against an Individual rights, is the Responsibility

of the Judge to swift the balance for the Second not the First case law pending. but exist.” Doc. 14 at 2 [sic]. Plaintiff did not identify any issues on appeal in his Notice of Appeal. *See* Doc. 13. The Court concludes that Plaintiff’s appeal is not taken in good faith and that his motion for leave to proceed IFP must be denied because he has not identified “the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal.” *DeBardleben*, 937 F.2d at 505.

IT IS ORDERED that Plaintiff’s Motion for Leave to Proceed on Appeal Without Prepayment of Costs or Fees, Doc. 14, filed April 26, 2016, is **DENIED**.

THE COURT CERTIFIES that Plaintiff’s appeal is not taken in good faith.



UNITED STATES DISTRICT JUDGE